

SENTENCING COMMISSION

MINUTES

Committee:	SENTENCING COMMISSION ANNUAL MEETING				
-------------------	---	--	--	--	--

Date:	Wednesday, April 1, 2009	Time:	8am – 3 pm	Place:	Westminster College Watson Board Room
--------------	--------------------------	--------------	------------	---------------	--

Members Present	Patrick Anderson, Paul Boyden, Judge Terry Christiansen, K.S. Cornaby, Scott Daniels, Rep. Lorie Fowlke, Curt Garner, Marlene Gonzalez, Ron Gordon, Senator Jon Greiner, Judge Kimberly Hornak, Dan Maldonado, James Marchel, Judge Paul Maughan, Judge Gregory Orme, Tom Patterson, Kathy Reimherr, Sheriff James Winder, Sy Snarr, Craig Barlow for Kirk Torgensen
Members Absent	David Brickey, Judge Jeffrey Burbank, Randy Kester, Chief Ed Rhoades, Doyle Talbot
Staff and Visitors	Staff: Reg Garff, Jo Lynn Kruse, Chris Mitchell, Ben Peterson, Jacey Skinner, David Walsh Visitors: Susan Burke, Susan Eisenman, Kent Hart, Rob Latham, Ray Wahl, Robert Yeates

Agenda Item:	Welcome and Approval of Minutes
Notes:	Kay Cornaby called the meeting to order and welcomed everyone and introduced our newest member, Sheriff James Winder, who replaces Sheriff Brad Slater. Scott Daniels made a motion to approve the January minutes. Judge Christiansen seconded the motion which passed unanimously . Presentations were made in recognition of outgoing members for their dedicated service and support. James Marchel served from 2003 – 2009 as the Juvenile Treatment representative and Robert S. Yeates as Executive Director of CCJJ from 2007 – 2009.

Agenda	2009 Legislative Session Update
Notes:	<p>Jacey led discussion regarding legislation that specifically deals with sentencing issues and tracking new penalties.</p> <p>SB 12 – DUI Amendments Defines a DUI court. Provides that reports issued by the Driver License Division may not contain evidence of an impaired driving conviction if the defendant is participating in or has completed a DUI court. Provides that if an impaired driving conviction is amended to a driving under the influence conviction, the DLD shall start the suspension or revocation on the date of the amended conviction and may not subtract any time for which the license was previously suspended or revoked.</p> <p>SB 116 – Criminal Penalty Amendments Clarifies that a person is guilty of a separate offense for each victim suffering bodily injury, serious bodily injury, or death as a result of the person's violation of the driving under the influence or automobile homicide provisions whether or not the injuries arise from the same episode of driving.</p> <p>HB 237 – Criminal Penalties Amendments – Leaving the Scene of an Accident Increases penalties for individuals who fail to stop at the scene of an accident where death or injury occurs when the person has previously been convicted of driving under the influence. Increases from Class A to 3rd degree felony.</p> <p>SB 272 – Driver License Sanctions and Sentencing Requirements for Driving Under the Influence and Alcohol Related Offenses. Increases the driver license suspension periods for driving under the influence and other alcohol related offenses.</p> <p>HB 29 – Sex Offenders' Contact With Children Makes it a class A misdemeanor for a registered sex offender, whose offense was against a child, to request or solicit a child younger than 14 to accompany them unless the parent of the child has given the offender either written or verbal permission to do so.</p> <p>HB 97 – Sexual Exploitation of a Minor</p>

Amends the offense of sexual exploitation of a minor to include the act of viewing child pornography.

HB 384 – Public Lewdness Amendments

Increases the penalty for lewdness to a 3rd degree felony upon a third conviction. (This penalty supersedes the increased penalty in HB 136).

HB 233 – Aggravated Sexual Assault Amendments

HB 136 – Sex Offender Definition Amendments

Adds lewdness and sexual battery to the offenses for which a convicted person must register as a sex offender. Amends the penalties for lewdness upon multiple convictions. (New 3rd degree felony)

HB 247 – Amendments to Email Information Required of Registered Sex Offenders

Makes three changes to the requirements of the sex and kidnap registry: 1. While offenders are still required to provide online internet identifiers, they are no longer required to provide internet passwords; 2. Removes information from the public registry that identifies the offender's primary and secondary targets; 3. Removes 76-5-304 Unlawful Detention as a registration requiring offense.

HB 14 – Material Harmful to Minors Amendments

Changes the penalties for distribution of pornographic material and dealing in material harmful to minors to a Class A misdemeanor for a 16 or 17 year old and a Class B misdemeanor for persons younger than 16. Remains a 3rd degree felony for persons over the age of 18 and for a second offense committed by a person under 18.

HB 317 – Capital Felony Amendments

Increases the minimum indeterminate sentence for capital felonies and aggravated murder from 20 years to 25 years.

SB 85 – Homicide Amendments

Removes the statutory defense of extreme emotional distress from the aggravated murder and murder statutes, and places it in the special mitigation statute.

HB 37 – Violent offenses Amendments

Amends the enhanced penalty for committing a group enhanced 1st degree felony to 5 years on top of the statutory minimum term. Adds discharge of a firearm as a predicate offense for aggravated murder. Adds several offenses to those subject to enhancement when committed by a group. (Increases penalty by 5 years).

SB 16 – Prohibited Gang Activity

Provides that a peace officer may order a group of reasonably suspected gang members to disperse from an area that has been designated as a no gang loitering area. A failure to disperse after an order from a peace officer is a class B misdemeanor. (Creates a new Class B misdemeanor)

SB 28 – Prohibited Activities of Gang Offenders

Creates new conditions of probation and parole for those convicted of a crime with a group enhanced penalty. A violation of this gang probation is a class A misdemeanor. (Creates new Class A misdemeanor)

SB 183 – Violation of Protection Order

Creates the ability for a respondent to ask for the dismissal of a protective order if the petitioner has repeatedly acted in contravention of the protective order provisions.

SB 220 – Cohabitant Abuse Procedures Act Amendments

Permits a court to issue a pretrial protective order in a domestic violence case at any hearing, not just at the time that the defendant is released from custody.

HB 275 – Domestic Violence in the Presence of a Child Amendments

Clarifies that the offense of committing domestic violence in the presence of a child may be charged as one count for each child present.

SB 202 – Drug Offender Reform Act (DORA) Amendments

Requires the Utah Substance Abuse and Anti-Violence Coordinating Council to coordinate the implementation of provisions of DORA in specified areas as funding allows.

HB 148 – Victim Rights Amendments

Gives a trial court judge the authority to fashion an appropriate remedy for a victim whose rights have been violated if the remedy does not create a violation of the defendant's rights.

SB 220 – Cohabitant Abuse Procedures Act Amendments

Permits a court to issue a pretrial protective order in a domestic violence case at any hearing, not just at the time that the defendant is released from custody.

HB 290 – Prohibition of Wireless Communication Device Use in a Motor Vehicle

	<p>Creates new Class C misdemeanor, new Class B misdemeanor and a new 3rd degree felony</p> <p>HB 25 - Gun Dealer Penalty Amendments</p> <p>Creates a new class A misdemeanor for a licensed handgun dealer who violates the criminal background check provisions of Section 76-10-526.</p> <p>The amendment to our State Constitution dealing with post conviction remedies did not pass. We will probably see it again next year.</p>
--	---

Agenda Item:	Review of Subcommittees and By-laws
Notes:	<p>The commission reviewed the Utah Sentencing Commission By-Laws. Tom Patterson inquired about Article V, Section II where it states: There shall be no voting by proxy at any meetings of the commission or any committees thereof. If a Commission member must miss a meeting, a delegate may be sent. Delegates are not entitled to vote or make motions, but may participate in the discussion. A discussion regarding the addition of wording to allow a member to vote via telephone if they cannot be present followed.</p> <p>Another change discussed is in Article III, Section I, which says "... at the annual May meeting". A suggestion was made to change it to "all day annual meeting".</p> <p>The last item discussed was Article VII – Committees. Past sub-committees include the following: Restitution, Registration, DUI, Guidelines Revisions, Jail Reimbursement, Juvenile Guidelines, Misdemeanor Guidelines and Anomalies. The issue raised was do we want to leave those in place and have available if and when needed or do we want to change them in any way? Jacey asked the commission if there are certain sub-committees that currently need to be in place, always be looking for issues in that area, and are there any sub-committees active right now? Scott Daniels noted that all sub-committees were set up to address specific problems; new ones were formed as necessary and then dissolved when problem was resolved. The consensus was to continue along those lines.</p> <p>A new draft with changes will be made and presented at the next meeting for a vote.</p>

Agenda Item:	Overview of Juvenile Court and Sentencing
Notes:	<p>Ray Wahl, Juvenile Court Administrator, spoke about those they serve: Juvenile Court, Justice Court, and District Court. The structure of Statewide Juvenile Court, philosophical differences between juvenile court and adult courts were discussed as well as similarities.</p> <p>Utah is unique in that it is one of only five states in the U.S. that have a statewide management information system. Another unique thing is that in some states, the child welfare portion of juvenile court is handled by a family court system, and delinquency issues are handled by the equivalent of our district court. Many states aspire to the best practice of the "one judge, one family" concept for juvenile court.</p> <p>Susan Burke gave a presentation called <i>Evidence-Based Sentencing, What Works with Youth</i>. Principles used are: Assess risk/needs with a validated instrument, focus on criminogenic needs, target interventions using risk, need and responsivity, ensure dosage is sufficient, and use cognitive behavioral approaches and measure outcomes.</p> <p>Criminogenic is a term used to reference offender dynamic factors that were statistically shown to be correlated with criminal conduct and amenability to change. If effectively addressed, should decrease level of risk. Criminogenic items are categorized by the "Big Four" and the "Next Four". The "Big Four" are: 1. History of anti-social behavior 2. Anti-social personality 3. Anti-social cognitions and 4. Anti-social peers. The "Next Four" are: 5. Family and marital status 6. Substance abuse 7. School and/or work and 8. Leisure and/or recreation.</p> <p>Targeting and reducing the dynamic characteristics linked to continued criminal activity is a key objective and includes changing antisocial attitudes and feelings; promoting identification and association with positive, law-abiding role models; increasing self-control; and replacing antisocial with pro-social skills. Susan further discussed what works with juvenile offenders. Juvenile Court has been building the components of an evidence based practice for 8 years. Organizational changes were</p>

	<p>required and Judges have been very supportive.</p> <p>Reg Garff spoke briefly about state supervision of juveniles. Back in 1997, when the juvenile sentencing guidelines were revised, there was a large infusion of money into the system. The first budget reduction occurred after Sept. 11, 2002. A second reduction happened just this year with another yet to come.</p> <p>Assistant Attorney General, Susan Eisenman discussed <i>Juveniles Charged as Adults</i>. Philosophical differences between juvenile court and adult court intersect. A very small percentage of juveniles are treated by law as adults. A handout from the presentation shows the three statutes that govern situations where juveniles are treated as adults and moved into the adult system: Direct File (78A-6-701), Serious Youth Offender (78A-6-702) and Certification (78A-6-703). The Direct File statute has recently been challenged by two district court cases. Currently JJS can only hold juveniles until they are 21 years of age. Some think if a 17 year old commits murder, and only spends five years locked up that it is not long enough. Around the country there is a trend on the Certification end, to lower the age below 14. Blended sentencing was mentioned. Paul Boyden stated that some changes or re-examination may be needed to the criteria under Serious Youth Offender and a special committee to research this issue would be appropriate.</p>
--	--

Agenda Item:	Criminal Justice Budget Report
Notes:	<p>According to a report released by the Rockefeller Institute of Government in March, 2009, the State of Utah experienced the largest decrease in tax revenues of any state (16.5%) in the last quarter of 2008 as compared to the last quarter of 2007. That significant drop forced the State Legislature to reduce agency budgets substantially during the last six months. Criminal Justice agency budgets were cut in the current fiscal year FY09, in FY10, and in FY11. Those cuts will lead to staff layoffs, facility closures, service reductions, program eliminations and transfer of obligations from state budgets to local budgets.</p> <p>The following agencies budgets' are impacted: Courts, Corrections, Jail Reimbursement, Juvenile Justice Services, Public Safety and the Attorney General. From a Sentencing Commission point of view, the FY11 budget looks worse. CCJJ experienced cuts to one-time funding for CEASE DUI technology program, SECP (Sexual Exploitation of Children Prevention), and DORA (Drug Offender Reform Act). CCJJ will distribute some of the stimulus grant money. We will be able to restore small amounts of funding to the courts, corrections, juvenile justice services, public safety and some one-time funding.</p>

Agenda Item	Future Topics Interim Studies
Notes:	<p>States approaches to juvenile offenses Impact of license suspension on recidivism Suspension links and what effects it does have and the rates of drivers driving on suspension Three-part youth offender - including adding to or subtracting from the list of deadly sins</p> <p>The following agree to serve on a subcommittee: Judge Orme, Patrick Anderson, Ron Gordon, Paul Boyden, Dan Maldonado, Judge Hornack and Senator Greiner. Judge Maughan made the motion of create a subcommittee to review this issue. Judge Christiansen seconded the motion which passed unanimously.</p> <p>Legislative issue of jury trials and misdemeanors and reducing Class C misdemeanors to infractions Juvenile sentencing guidelines – wait till the Fall to get some statistics</p>

Agenda Item	Future Meeting Dates
Notes:	<p>June 3, 2009 August 5, 2009 September 2, 2009 November 4, 2009 January 6, 2010</p>

The next meeting is scheduled for Wednesday, June 3, 2009 at noon, Utah State Capitol Complex, Senate Bldg., Spruce Room
Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ